App. F. IX-4

Previous References P

192 Law 1-

File No. 76, 29

Serial Nos. 1-7

Later References

Law 4-28 9.870

Law 77-30 (1)

General and Revenue Secretariat

Serial Nos. 7

Part B for Feby 19 29

SUBJECT

Q. 1 4 9 26-27 Diff. Comm. Chiefs
Pw & Bastian Lower masters 1 Font

Filed

Appeals
9/2/29

G. R. S. III—3]

748.25

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record]

370

1) Notice dated 19th July 1925 from Mr T. Venkatashiba Sathy B.A.L.L.B. Advocate, Trichy on behalf of his client Mr M. Bastian Louis stating that he would file suit against Govt for Rs 4 33/10 together with interest on account of supplying a bell at Uyyakondan under a contract

1) This has been entered in Special Notice Register (No.

This will, if approved, be forwarded to The Ld. GM S.R. 2) Approved

22/1 3) Chdeen)

Ld Secy

24.7.25

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

WD 1860—GPB—1,50,000—8/5-21.

748 / 25

G. R. S. III—6]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

4) A report with details of the claim, reg for ~~an~~ payment what is proposed to be done may be called for. If answered & necessary a reply to the Asstt that a report has been called for regarding the claim may be sent—

not necessary at this stage

Case 748

Asstt Secy

5) A/c Supdt

8/1 1578 of 1918

Dr a/c Supdt

Law 1918

Issue 17.8

Law 17.8 for 17.8

Issue Cr/ 17.8

for A Secretary 26/9/25

1/9/18

2)

To the Dy. Secretary No 8.C. 13/L.P.25 of 14.8.25 calls for the records together with a report

From the Dy. Secretary No 8.C. 13/L.P.25-26 of 16.9.25 forwards the records.

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Serial No

7

The facts are contained in the ~~Kadur District~~ DO office Note Marked A & Sub Division office Note Marked B. The amount claimed has not been paid as the ~~work~~ well had collapsed owing to the use of bad materials and negligence of the Contractor in taking proper care of the work before the well was handed over to the Department. A reply has been sent to the Abstract on 7.8.24 by the S.D.O. No action seems called for.

8

VPO 815 WR 819

This appears to be rather a bad case for the Deptt. The well was completed before 1922 & as per terms of the agreement, the Contractor repaired the well which had collapsed. This Obligation was only for a year. The Deptt was prepared to pay, but did not as there was no Sanctioned Grant available when payment was to be made. After 1923, as the well had collapsed again, enquiries were made & payment refused as bad material was stated to be used &c. This notice was given to the Contractor in 1924 The well ~~was~~ when under Construction was under the supervision of Officers & several bills have already been

Serial No

paid. After completion of the work & after the lapse of one year contemplated in the Municipality, the Contractor is not responsible. No objection was taken when the well was under construction. The suit, if filed may go against the deptt. It is for consideration whether a settlement outside Court may not be attempted and for orders.

Ld Secy

Law 1/9

9) The proposed reply is all right & may be sent. The action may be defended. Reply.

Cap 8/9

10) Reply has already been sent by the deptt. Whether a fresh reply may be sent from here also to be noted for orders

Ld Secy

8/9 12-9 Cap 12/9

11) No fresh action necessary 14-9

Cap 12/9

12) This may be sent to L.R. Branch for note & return when the records will be returned

Ld 15/9

13) Yes

Cap 15/9

14) Noted and returned

Ld 16/9

Law 16/9 4 16/9 4

Draft returning the records sent on 16/9 Issued 16/9 Not. 1646 of 22.9.45

NOTE—Contn. Sheet

5575/26 h 10/10

C S 4 of 1926—27

App. F. III—2]

General and Revenue Secretariat. | File No. of 192

Serial No.

5) Letter no 191 d 31 May 1927 from Public Prosecutor Shimoga forwarding for approval and signature of Chief Secy a written Statement to be filed in C.S. 4/26—27 on the file Dt Judge Shimoga Letter no 192 forwards copy of plaint for perusal and return

Submitted for perusal & orders

MBAG
1/6/27

Secy L.D 2/6

The written Statement may be approved The Chief Secy may sign it & return to me so as to enable me to forward the same to the P.P. 4-6.

Chief Secy
with Compts

Send to P.P.
4/6

4-6

4-6

Submitted draft.
MBAG
4/6/27

6) Issued P 6311 d 4-6-27

The file may be sent to G.D. Branch for noting and separating their file herewith-linked

MBAG 6/6/27 To Mysore Bar for taking two linked file & returning this

NOTE—Contn. sheet.

WD 2293—GPB—10,000—4-5-27

8/6

To the Book Bar with Compts 8/6/27

8/6

5515 of 26 P

3172

O.S. 4 of 26 27 Dt. Ct. Shimoga

(Bastian Louis Mathias & Anr)

2984 P 28

App. F. III—2]

3172 of 28 P

General and Revenue Secretariat.

File No. of 192

Serial No.

In the Statement for the quarter ending 30th Sept 1928, it is said that the case was posted for 5th Oct to 20-9-28

Draft to PPx enquiring about the decision of the case put up for approval

MM 5.1.29 — The statement for the quarter ending 31st Dec is due. Its receipt may be awaited.

Laws 5/1

Sus B for a week. MM 12.1.29

Letter no 211 dated 18th Jan 1929 from the Public Prosecutor, Shimoga, forwarding copy of the judgt in O.S. 4 of 26-27 on the file of the Dist Judge, Shimoga and intimating that in his opinion it is of doubtful utility to take the case in appeal.

Secy's note on the P.V.D.

"I had also handled this case to some extent. The Amildar's report proves the plaintiff's case. It is not a fit case for appeal." Sd P.M. 21.1.29.

OFFICE OF THE SECOND MEMBER OF COUNCIL 24 JAN 1929 No. 5651

Under rule 109 of the Legal affairs rules this has to be submitted for orders of Govt.

MM 22.1.29 (L.R.)

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—4.28

Member

P 23/1

03829

Gm. 370

T. VENKATA SUBBA SASTRI, B.A., LL.B.
ADVOCATE

Shimoga, 19th July 1925

N 30.

To,

O.N. No. 57 Shimoga

The Chief Secretary
to the Government of Mysore
Bangalore

Under § 80 of Code of Civil Procedure

Dear Sir,

I am

my client Mr M. Basvan Gowda Patel Son of Francis Lopes resident of Sorab has instructed me to issue this notice to you

He was entrusted with the work of excavating a well at Sigga village Sorab Tq under the Malnad Improvement Scheme, and was entrusted with the work on about 10-11-22. He completed the work according to the estimate sanctioned and handed over charge of the well to the Amildar of Sorab. He gave a petition to the Dewan Sahib on 22-11-22 about and subsequently the Subdivision assistant Commissioner of Sagara issued an Endorsement to

T. VENKATA SUBBA SASTRI, B.A., LL.B.
ADVOCATE

Shimoga, 14th July 192

similar notice has also been sent to the commissioners and president District Board, Shimoga.

I remain, Dear Sir
Your obedient servant
T Venkata Subba Sastri
Advocate

App.F.VI-G1.]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

No. 9998 (1)

To The D.C. Shimoga

Sir,

I am directed to forward herewith copy of a petition dated 19.7.25 from M. T. Venkatasubba Sastry, Advocate, Shimoga on ~~behalf of his client~~ ~~M. Bastian Sons~~ demanding payment of a sum of Rs 33,100 with interest said to be due to his client M. Bastian Sons on account of a war

over

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *192*

Date of issue 18/8/25.

Signed by W. C. C. A. G.

List of enclosures .....

Copied by .....

Examined by .....

I wish by the latter also
to say a few words. Several Talks
and he requests you to
send to him upon
with your a statement as
to the case
regards the details
of the claim reasons for
non-payment and the
further action proposed
to be taken.

Yours truly

[illegible]

12102

1140/P/25

No.P.C.13(LB)25-26.

OFFICE OF THE PRESIDENT, DISTRICT BOARD.
SHIMOGA DISTRICT.

Reg.no. 84/Shimoga

Encl. one file & M. Book.

Shimoga, Dated the....4th..September.....192 5.

From

A.K. Syed Taj Peeran, Esquire., B.A.,
President, District Board,
Shimoga District.

To,

B. Nagappa, Esquire., Bar-at-law.,
Secretary to the Government of Mysore,
Bangalore.

Sir,

With reference to your letter No. P. 998(1) dated the 18th August 1925 forwarding, for report, a copy of the notice from Mr. T. Venkatasubba Sastry, Advocate, on behalf of his client's claim for payment of certain sum of money on account of a well sunk by the latter at Bigga in Sorab Taluk, I have the honour to forward herewith, the report No. O.C. 374/24-25 dated the 24th August 1925 submitted by the Sub Division Officer of Sagar in the matter, together with the entire file of correspondence on the subject. A copy of the endorsement dated the 7th August 1925 issued, by the Sub Division Officer of Sagar, to the advocate on his original notice dated the 19th July 1925 addressed to the Deputy Commissioner and President District Board, Shimoga is enclosed in the file for reference. The facts of the case are clearly setforth in this office note(flagA) and also one (flag.B) put up in the office ~~file~~ of the Sagar

Sub Division.

I have the honour to be,

S i r ,

Your most obedient servant,

Bhubbakoo

For President,

District Board, SHIMOGA.

App.F.VI-G1.]

SUBJECT

Section

File No.

Serial No.

Diary No. of letter replied to

No. P 1646 Accts

To The President, Mahad
Shimoga

General and Revenue Secretariat
(,
the *192*

Date of issue 22/9/25

Signed by

I am directed to return herewith the record relating to the claim of Contractor Rahim Khan Khansaheb of a work shown by him as Siddapur village road in your letter No P.C. 13 (2.8) 25-26 dated 5.9.25 & to request the favour of an acknowledgment

List of enclosures

Copied by

Examined by

March
1879

over

MR 1879

14811

1474
P 1

No.P.C. 13(LB)25-26.

OFFICE OF THE PRESIDENT, DISTRICT BOARD,
SHIMOGA DISTRICT.

Shimoga, Dated the 30th September *192* 5

From

A.K. Syed Taj Peeran, Esquire., B.A.,
President, District Board,
Shimoga District.

To,

B. Nagappa, Esquire., Bar-at-law.,
Secretary to the Government of Mysore,
Local and Legislative Departments.

Sir,

I have the honour to acknowledge the receipt of the records relating to the claim of Contractor Bastion Louis, Maistry on account of well sunk in Sigga Village forwarded with your No. P. 1646 dated the 22nd September 1925.

I have the honour to be,
S i r ,
Your most obedient servant,

For P r e s i d e n t ,
District Board, S h i m o g a .

6-B
6/16

5515
P 926

No. 191 SHIMOGA,

Enc. 1.

Dated 31st. May. *1927*

From

N. SESHA SASTRI, ESQ., B. A., B. L.,
Public Prosecutor.
SHIMOGA DIVISION.

To

The Secretary to Government,
Law Department, Bangalore.

46 47 Laws 116

Sir,

With reference to the letter No. G.3054 dated 16-9-26 of the Secretary to Government Medical and Agricultural Departments, requiring me to appear and defend Government in O.S.4/26-27 on the file of the District Judge, Shimoga Division, Bastian Louis Maistry vs 1. Government of Mysore 2. President, District Board, Shimoga I have the honor to submit herewith, as required by Rule 93 of the Rules for the Conduct of the Legal Affairs of Government G.O. No. P4966-50456cts-76-23-1 Dated 10/19-3-1924 the written statement which is to be filed on behalf of ~~xxxxxx~~ the defendants for your kind approval. If approved, I request that the same may be got signed and ~~xxx~~ verified by the Chief Secretary who is the 1st defendant and returned to me. I have prepared a joint statement as the defence is common to both the defendants. On receipt of the statement I shall have to get it signed and verified by the President, District Board and produce it in court on ~~xx~~ 10-6-1927 which is the date of hearing.

As the case is pending for a long timethe Court has intimated on the last date of hearing that no further time will be granted for the production of the written statement. I therefore request you to treat this as urgent and do the needful at a very early date.

I have prepared this written statement as per instructions of the President, District Board~~x~~ given to me through his office.

Copy of the plaint is herewith sent for kind perusal and return.

I have the honor to be
Sir,
Your most obedient servant
N. Seshasastri
Public Prosecutor, Shimoga Division.

192— MEMORANDUM

5574/24

From

N. SESHA SASTRI, Esq., B. A., B. L.,
PUBLIC PROSECUTOR AND GOVERNMENT PLEADER,
SHIMOGA DIVISION.

To

31-5-1924

The Secretary
Law Department
Bangalore

Sir

I have the honor to submit herewith the plaint copy referred to in my letter no 191 dated this day but which was not enclosed in the said letter by oversight.

I have the honor to be
Sir
Your most obedient servant
N Sesha Sastri
P.P. [illegible]

[Please reply overleaf

Law 1/6

W D 3226—GPB—25,000—4-7-16

PP. F. VI. Gl.]

SUBJECT.....

.....

.....

Section

File No.

Serial No.

No. P. 1311 / Law

Encls 1

To

P. P.
Shemuga

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

Date of issue 4 6 27

Signed by W J S. Thomson.

Sir

I have the honour to return herewith after approval and signature of Chief Secretary to Govt. & the file in G.S. 4 226—27 the draft sullen Statement forwarded on the file 7 Dot. Notes, Stamps by you in your letter no 191 & 31.5. 1927

Copy of the plaint received with no 192 & 31.5.27 is returned as requested,

I have etc

28/4/27 Law Secy

List of enclosures.....

Copied by.....

Examined by.....

over

WD 01265—GPB—31,000—24-12-25

No 211.
Encl. Judgment & decree copies.

SHIMOGA

Dated 18th January, 1929.

From

N. SESHA SASTRI, ESQ., B. A., B. L.,
Public Prosecutor,
SHIMOGA DIVISION.

To

The Secretary to Government,
Law Department, Bangalore.

Sir,

With reference to letter No. G 3054/Sany dated 16-9-1926, from the Secretary to Government Medical and Agricultural Departments, asking me to appear and conduct the defence on behalf of Govennment in O.S. 4/26-27 on the file of the District Judge, Shimoga Division (Bastian Louis Maistry Vs Government and another) I have the honor to state that the suit was disposed of after contest on the 18th October, 1928. The learned Judge holds that the plaintiff's contentions are substantially well-founded and has passed a decree in his favour for Rs 418-10-0 with proportionate costs and current interest. Certified copies of the judgment and decree are herein enclosed for kind perusal. In case an appeal is to be filed in the Chief Court against this decision, the last day for filing the same will be 24th February, 1929 as we can deduct the period requisite for obtaining copies and the said period was from the date of judgment to 26th. November, 1928.

As regards the advisibility of preferring an appeal, I must confess that I cannot confidently assert that it is a fit case. Our main contentions in the suit were (1) that the plaintiff used bad materials and did defective workmanship in the construction of the well and as a consequence the well collapsed and that he could claim payment only if he reconstructed the well at his own cost. (2) That he did not hand over possession of the well to the authorities concerned (3) That the suit was barred by time. The learned Judge has held against us on all these points and decreed the suit in part. The

Amildar of Sorab was the officer in immediate charge and he has made a report to his superior officer on 16-8-1923 admitting that the contractor had completed the work in June, 1922 and that owing to the unprecedented ~~flooding~~ heavy down-pour of rain in 1923, the well collapsed in July of that year. This report of the Amildar weakens to a great extent our contention that the well was not handed over to the authorities in June, 1922. This exhibit makes it clear that the construction was completed in June, 1922 and that as the collapse took place more than one year after the completion of the well, the plaintiff could not be compelled to reconstruct the well, the undertaking of the plaintiff being only that he would reconstruct the well if it collapsed within one year of its completion. It is, therefore, very difficult to substantiate in the appellate Court that the ~~plaintiff~~ plaintiff did not perform his part of the contract completely.

On the question of limitation, the learned Judge has held that the suit is in time without assigning any reason. In the reply to the memo of information submitted by me, the plaintiff stated that the work was completed and the well handed over in June, 1923 apparently ~~for the purpose~~ with a view to save limitation as the suit was brought just within 3 years after this date. During the course of evidence, he took up the position that it was June, 1922, apparently for the reason that if he stuck to 1923, he would under the contract be ~~held~~ liable to reconstruct the well at his own cost as the well collapsed in July 1923 The learned Judge agrees with the plaintiff's latter position and holds that the construction was completed in June, 1922. Though he does not give any reason as to why the suit which was ~~for~~ brought more than 3 years after the date of completion is within time he probably thinks that the endorsements to plaintiff's petition marked as Ex E is an acknowledgement of liability by the Sub-Division Officer and saves limitation. (Purport of the same is to be found in the 22nd sheet of the copy of judgment.) If this is looked upon as an acknowledgement of liability ~~by the~~ and if the Sub-Division ~~Officer~~ Officer is to be considered as an agent duly authorised to make the acknowledgement, the suit must be held to be within time. On the latter point, it is difficult to say that he is not an agent On the former point, however, it may be contended that the exhibit is only

a conditional acknowledgement and does not support the view that any liability is admitted to be existing. As this is at best a doubtful point, I am not sure if the case can be taken up to the higher Court with any certainty of success.

Copies of pleadings, depositions etc. will be sent if required.

I have the honor to be,
Sir,
Your most obedient servant,

N. Ranga Rao.

Public Prosecutor, Shimoga Division.

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

1st sheet.

In the Court of the District gudge, Shimoga Division.

original Suit Number 4 of 1926-27.

Dated the 18th day of october 1928.

Present:-

B. R. Krishnamachar, Esquire B.A.B.L.

District gudge.

Plaintiff:-

M. Bastian Louis Maistry.

Defendants:-

1. The Government of Mysore, by its Chief Secretary. (2) The Deputy Commissioner and ~~President~~ present A District Board Shimoga Mr. A. K. Syed Tajpeeran B.A.

Preamble.

1. The suit is for the recovery of rupees 633-10-0 due from the defendants for the work done

TWO ANNAS
MYSORE
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by the plaintiff re-excavating a well at Sigga, Sorab Taluq under the Malnad Improvement Scheme

2nd sheet-

2. The suit was filed on 10-8-1926 and the written statement of the defendants was filed on 10-6-1927 The plaintiff's reply statement was filed on 27-9-1927.

3. The suit came on for settlement of issues on 18-10-1927 and the following issues were framed.

(1) Was time not of the essence of the contract and did plaintiff complete the well in time and deliver it as alleged?

(2) Did the well collapse on account

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

"judgment"

Pleadings in this case are all in English, and they will — therefore be simply copied out below.

4th sheet-

Plaint:- Plaintiff was entrusted with the work of excavating a well at Sigga village, Navi Hobli Sorab Taluq, under the Malnad Improvement Scheme of the first Defendant,

and the said work was entrusted on or about 10-2-1920.

He completed the work according to the estimate sanctioned and handed over charge of the well to the 1st Defendant through the Amildar and the president of

TWO ANNAS

MYSORE

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to intimate the plaintiff that his claim was placed before the District Board for settlement and that payment would be made — thereafter.

6th sheet.

As no payment was made beyond assurances given every now and then that the plaintiff would be paid on receipt of allotment money

Plaintiff issued a notice to both the Defendants under Sections 80 of the Code of Civil Procedure as required by law on 19.7.1925.

As no payment has been made and untenable new pleas are now urged against payment this

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

2 Defence.

It is true that plaintiff was entrusted with the work of sinking a well at Sigga in Sorab Taluq on or about 10-2-1920.

8th sheet.

Plaintiff has omitted to disclose that he was so entrusted as a contractor under a written agreement dated 11-2-1920 which he executed in favour of Defendant and under which he undertook (i) to complete the work within the time given (one year), (ii) in case of failure to perform the contract within the time stipulated to be liable to the Government for all losses; (iii) and to reconstruct the well at his own cost if it collapsed

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

collapsed within a year after the completion of the work, the said agreement is herewith filed)

It is not true that plaintiff completed the work according to the estimate sanctioned and handed over charge of the well to the Amildar and the president of the Taluq Board Sorab

The work remains uncompleted even to this day

Defendants admit the endorsements referred to in the plaint which were given by the Sub Division Assistant Commissioner and the Amildar. But the said Endorsements do not contain any absolute undertaking to pay

Rupees

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

Rupees 433-10-0/- claimed by the plaintiff; and even if they convey any such orded these Defendants are not bound by the said endorsements as the officers concerned had no power to give such undertaking.

10th sheet

Defendants admit receipt of notices referred to in the plaint and state that they sent a reply repudiating their liability for plaintiff's claim and stating the grounds therefor.

Plaintiff did not fulfil any of the terms of the contract dated 11.2.1920.

The well that he was sinking collapsed on more than one occasion and this was due

TWO ANNAS
MYSORE
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to the wilful negligence of plaintiff in not taking proper care of the work during the monsoons and to his using bad materials in the construction of the work.

11th Sheet

Plaintiff was served with a notice dated 13-3-1924 requiring that if he were to claim any payment, he should re-construct the well within a reasonable time at his own cost.

As per Rules a contractor who undertakes to execute a work is bound to take all necessary precautions to safe-gaurd the work until the same is completely closed and handed

over

TWO ANNAS
MYSORE
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over to the authorities concerned.

Plaintiff did nothing of the kind, and he is therefore, not only not entitled to claim payment but is bound to make good the loss incurred by the Government in this behalf

12th sheet-

Any allegation in the plaint either express or implied- contrary to what is stated above is false.

Date of the cause of action alleged is not correctly stated in the plaint, and the suit is not in time.

Plaintiff's claim for interest is not tenable and the amount claimed is excessive.

Plaintiff's suit is therefore liable

TWO ANNAS
MYSORE
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liable to be dismissed with costs".

3. Reply:-

13th sheet

It is true that the plaintiff has executed the written agreement.

Stipulations in the said agreement were only formal and the officer who took the agreement assured that they were inserted only normally and that they would not be strictly enforced in view of the difficult conditions of the place.

It is not true to say that the work was not completed according to the sanctioned estimate

It-

TWO ANNAS
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MYSORE

and as they were acting through
their officers they are completely
bound by the said statements.

15th sheet- First Defendant did not send
any reply to plaintiffs notice

The notice of 13-5-1924 was
beyond the scope of the contractors'
duties, and there was no obligation
on the part of the plaintiff to
obey its terms.

It is not clear what the
Rules referred to in the written
statement are and plaintiff was
not informed of the same. The
Defendants may be asked to
produce and name the authority
under which they were promulgated.

Plaintiff submits that the contention
about-

TWO ANNAS ಎರಡು ಆಣ್
MYSORE

17th sheet.

amount that is due to him by unreasonable & unfair contentions.

All statements and pleas contrary to the plaint and this Reply statement are not true and are not admitted -

4. Exhibit P dated 10-2-1920, is the estimate for sinking the well in question at a cost of rupees 680-0-0/- and it contains an order to the plaintiff by the Sub-overseer that he should start the work forthwith and complete it before the end of June 1920.

Exhibit A, dated 14-2-1920, is the stamped Muchalika executed by the plaintiff in favour of

TWO ANNAS
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MYSORE

appears to be true plaintiff also says.

that he dug the well to a depth of about 40 to 50 feet till

19th sheet- water-spring was reached,

that he began the rivetment from the bottom,

that there remained about 2 men's depth at the top to be rivetted,

that at that juncture rains came on and the unrivetted portion at the top collapsed and fell into the well,

that the rivetted portion remained intact,

that as per directions of the Amildar he removed

the

TWO ANNAS ಎರಡು ಆಣ್ಣೆ

GOVT. OF MYSORE

to the Deputy Commissioner for sanction of the said Estimate.

Allotment of 1000 Rupees /- provided in this year was spent away for other works.

23rd sheet.

For supplemental allotment, 2 or 3 references have been made.

Your claim will be settled as soon as supplemental allotment is sanctioned.

Nothing can be done now as there is no money.

There is no use in your addressing petitions repeatedly."

On 16.8-1923, the Amildar sent a report to the Sub Division officer stating

that

TWO ANNAS
GOVT OF MYSORE
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24 th sheet.

that on 13 3. 1919 the original estimalē for Rupees 680/- had been sanctioned,

that on 19. 6. 1923 the revised estimalē had been sanctioned for Rupees 807-2-0/,

that the contractor had been paid Rupees 430-0-0/- out of Rupees 512-15-11 claimed by him in his Bills Nos I, II, and III,

that the top-portion of the well above 26 feet had collapsed in the rainy seasons of 1920/21 and 1921-22,

that the contractor had repaired the damage in both years out of his own moneys,

that he had completed

the

TWO ANNAS
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GOVT OF MYSORE

and according to the Revised Estimate, total sum that had to be paid was Rupees 848-10-0/-

21st Sheet.

Deducting Rupees 512-15-11 above-mentioned and deducting also Rupees 82-15-11/- which was the amount said to have been held in reserve, the net amount that had yet to be paid to plaintiff was Rupees 418-10-0/- as per Bill Nos IV

[Exhibit I, dated 15-5-1922, is plaintiff's application for enhanced rules and revised estimate and for enlarging the time till the end of June 1922]

Exhibit D, dated 24-1-1923, is the endorsement given by the

TWO ANNAS
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GOVERNMENT OF MYSORE

the debris and completed the rivetment, and completed the work undertaken by him,

and that he gave a garibpatti to the Amildar who prepared a bill - Exhibit C for Rupees 418-10-0/-

20th sheet-

Exhibit C, dated 14-6-1922, is the Abstract of Measurement Book signed by the Sanitary Inspector and Sirab Taluq Amildar, containing a shara "checked and found correct".

As per Exhibit C, for work done as per the original Estimate Rupees 5-12-15-11 had been paid on Bills Nos. I, II, and III,

and

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MYSORE

the Deputy Commissioner to the plaintiff in reply to his petition, dated 22-11-1922 addressed to the

22nd sheet- Dewan Saheb, stating that the amount that was legitimately due would be paid as soon as the Malnad Improvement Budget for the current year was sanctioned

Exhibit E dated 26-6-1923, is the endorsement given to the plaintiff by the Sagar Sub-Division Assistant Commissioner to the following effect :-

Read your petition re Segg well contract.

Rupees 433-10-0/- should be paid to you as per Revised Estimate. Records have been submitted

to

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to the Deputy Commissioner for sanction of the said Estimate.

Allotment of 1000 Rupees /- provided in this year was spent away for other works.

23rd sheet.

For supplemental allotment, 2 or 3 references have been made

Your claim will be settled as soon as supplemental allotment is sanctioned.

Nothing can be done now as there is no money.

There is no use in your addressing petitions repeatedly."

On 16.8-1923, the Amildar sent a report to the Sub Division officer stating

that

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GOVT OF MYSORE

that on 13-3-1919 the original estimale for Rupees 680/- had been sanctioned,

24 Hr. sheet- that on 19-6-1923 the revised estimale had been sanctioned for Rupees 807-2-0/,

that the contractor had been paid Rupees 430-0-0/- out of Rupees 512-15-11 claimed by him in his Bills Nos. I, II, and III,

that the top-portion of the well above 26 feet had collapsed in the rainy seasons of 1920/21 and 1921-22,

that the contractor had repaired the damage in both years out of his own moneys,

that he had completed the

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the work in June 1922,

that owing to unprecedented heavy downpour of rain in the year (1923), there was again a collapse of about 15 feet from the top,

that to repair the said damage, an additional allotment of Rupees 250/- was necessary,

that the contractor refus to do the repairs at his cost,

and that a balance of Rupees 377-2-0 was still due to hi

The Sub-Division officer forwarded this report to the Deputy Commissioner and at a meeting of the District Board held on 22-12-1923, a Resolution was

25th sheet-

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deterring
was passed ~~deferring~~ payment and calling for a further report from the Sub-Division officer as to whether the collapse was due to bad work and negligence on the part of the contractor or to unavoidable causes

26th sheet-

Exhibit F. dated 16-11-1923, is the endorsement given by the president of the Taluq Board to the plaintiff to the effect that as the well had collapsed several times the amount claimed could not be paid without the approval of the District Board.

On 23-2-1924, the Sub-Division officer went to the spot and assembled

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assembled the villagers had a Mahazar drawn up (Exhibit VI), and took down plaintiff's statement (Exhibit II).

27th sheet.

In Exhibit II, plaintiff has stated that he sunk the well to a depth 50 feet in the first year (1920),

that he got a stone rivetment to a depth of about 30 feet,

that he could not do the rest of the rivetment as he could not get stones in that year,

that the unrivetted portion collapsed, that in the following year (1921) he had the debris removed, and built the stone-

rivetment

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that instead of using gravel behind the rest of the rivetment he had used powdered dust (ಪುಡಿಮಾಡಿದ ಕಸ) of gammitire stone,

29th sheet.

and that the collapse had occurred on account of absence of a parapet wall and water rushing in from the surrounding area

Exhibit III is plaintiff's petition to the Deputy Commissioner dated 9-3-1924, intimating that if his claim was not settled in a fortnight he would have recourse to a law-suit.

Exhibit V dated 20-3-1924, is the Sub-Division officer's report to the Deputy Commissioner saying that the collapses were due to bad

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bad work done by the contractor.

On 28. 3 1924 the District Board passed a Resolution that the Contractor must be directed to reconstruct the well if he claims payment as the collapse was entirely due to his wilful negligence and using bad materials

30th sheet

This was communicated to the plaintiff by the Taluq Board-president on 13-5-1924 (Vide Exhibit-IV).

plaintiff then issued a legal notice to the Deputy Commissioner on 19-7-1925, and after he received the Sub-Division officer's reply thereto, dated 7-8-1925 (Exhibit G), refusing payment,

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found to be all right. Details given in the Measure-(~~Book~~ Book); Abstract Exhibit C. are the following:

32nd sheet

(1) Earth excavation;

(2) Excavation in Somanatha hard rock.

(3) " Ditto " " Soft rock.

(4) Laterite stone foundation;

(5) Bailing out water;

(6) Laterite stone rivetment;

(7) Jelly-backing

(8) Rocky gravel backing

A sum of rupees 418-10-0/- was found due to plaintiff. The Amildar could not pay the amount as there was no money available. The then Sub-Division officer promised to settle the plaintiff's claim as soon as

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as the supplemental grant which had been applied for was sanctioned (Exhibit C). The Amildar ought

33rd sheet. to have taken over charge of the well when he found that nothing more remained to be done by the plaintiff and he ought to have taken steps to protect or preserve it in good condition. He did not do so. Plaintiff thought that as he had completed the work and had got it checked and approved he had nothing more to do with the well. The result was that the well was not taken care of by anybody and that there was consequently a complete collapse on account of the unprecedented

rains

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rdins in guly 1923 an act of god
for which plaintiff was not
responsible The authorities concerned
34th sheet. were not gustified later on in
turning round and saying that
the said collapse was due to bad
materials used and negligence
on the part of plaintiff. Plaintiff
was not bound to take care
of the well till his money was
paid down He is responsibility ceased
when he completed the work
and had it checked and approved
It was none of his business to
protect the well by putting up a
roofing and cutting up a trench
all round. He was not responsible
for the damage done more than

a

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I hold on the second Issue that the well did not collapse on account of plaintiff's negligence, and that the collapse was due to act of God.

36th sheet

I hold on the third Issue that plaintiff is not bound to re-construct the well at his own cost.

And, I hold on the fourth Issue that the suit is not barred by limitation.

In the result there will be a decree for plaintiff against the Defendants for Rupees 418-10-0/- only with proportionate costs.

Current interest will run at 6 per cent per annum from date

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date of suit to date of payment.

Pronounced in open Court.

37th sheet- (Signed) B. R. Krishnamachar

District grudge.

18. 10- 1928.

"True copy"

DISTRICT AND SESSIONS COURT SHIMOGA DIVISION

Head Record Keeper.

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GOVT OF MYSORE

39th sheet

List of documents admitted in evidence. Form number 114. Civil.

In the Court of the District judge at Shimoga.

original Suit number 4 of 1926-1927

Plaintiff. Defendants.

Bastian Louis Maistry vs The Government of Mysore and another

List of documents admitted in evidence for the plaintiff.

Distinguishing letter or number	Description of documents	Date of admission	Remarks.
Exhibits A.	Agreement dated 11-2-1920 between plaintiff and Government resinking of a well in Sigga.	10-8-1928.	
B.	Estimate for rupees 680/- dated 10-2-1920.	10-8-1928.	

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Distinguishing letter or number	Description of documents	Date of admission	Remarks.
Exhibit C.	Bill for Rupees 418-10-0	10-8-1928.	
D.	Endorsement to the plaintiff dated 24-1-1923 from the Deputy Commissioner Shimoga.	10-8-1928.	
E	Endorsement dated 26-6-1923 given by Sagar Sub-Division officer to the Plaintiff.	10-8-1928.	
F	Endorsement dated 16-11-1923 by Soral Taluq. Board President to the Plaintiff.	10-8-1928.	
G.	Reply dated 7-8-1925 from the Sagar Sub-Division officer to Plaintiff's Advocate Mr. T. Venkatasubba-Sastry	10-8-1928.	

40th sheet

H

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Distinguishing letter or number.	Description of documents	Date of admission	Remarks.
Ext H.	Report dated 16-8-1923 made by the Amildar of Sorab to the Sub-Division officer Sagar	10-8-1928	
	(Sd) B. R. K. District Judge.		

4 [illegible] sheet.

List of documents admitted in evidence for the Defendants.

Exhibits I.	Plaintiff's statement before the Sanitary Inspector Sorab on 15-5-1922.	10-8-1928.	
II	Statement of plaintiff dated 23-2-1924 before the Sub-Division officer Sagar	10-8-1928.	
II (a)	A portion in Exhibit II	10-8-1928.	

III

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Decree Section 34. C. P. Code. Form Number 15. (Civil)

In the Court of the District Judge at Shimoga Dewwon at Shimoga.

original Suit Number 4 of 1926-1927.

Plaintiff:- M. Bastian Louis Maistry son of Francis Louis, Contractor, resident of Sorab.

Defendants:-

1. The Government of Mysore by its Chief Secretary, Bangalore

(2) The Deputy Commissioner and president, District Board, Shimoga

Mr. A. K Syed Taj Peeran B. A. resident of Shimoga.

Suit to recover rupees 433-10-0 balance due for the work done with Rupees 200-0-0 on account

1st sheet

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account of damages and 1033
of interest in all rupees 1033-10-0
was fixed on 10-8-26.

2nd sheet. This suit coming on for final disposal before B. R. Krishnamachar Esq. B.A. B.L. District Judge Shimoga in the presence of Mr. Venkata-Subbasastry Advocate for the plaintiff and Mr. N. Seshasastry Advocate for the Defendants.

It is ordered and decreed that defendants do pay plaintiff Rupees 418-10-0 with proportionate costs and current interest at six per cent per annum from date of suit (10-8-1926) till date of payment.

And it is further ordered and decreed that defendants do pay

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pay to plaintiff the sum of rupees 105-0-11 being the amount of proportionate costs incurred in this suit, as by Memorandum annexed with interest thereon at six per cent per annum from this date unto the date of realization.

3 rd sheet-

Given under my hand and the seal of the Court, this 18th day of October 1928.

(Signed) B. R. Krishnamachar

District Judge.

Memorandum of costs incurred in this Suit.

	By the plaintiff.			By the Defendants.		
	Rs	as	ps	Rs	as	ps.
Court fee on plaint	64	0	0	0	0	0
Power of Attorney	0	8	0	0	8	0
Application	3	0	0	0	0	0
Service of process						